**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**DIVISION OF JUDGES**
**SAN FRANCISCO BRANCH OFFICE**

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| **PAE AVIATION AND TECHNICAL SERVICES LLC** | ) | |
| **and** | ) | Case No. 28-CA-203755 |
| **INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 2949, AFL-CIO** | ) | |

# PAE AVIATION AND TECHNICAL SERVICES LLC POST-HEARING BRIEF

**Before Mara-Louise Anzalone, Administrative Law Judge**


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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**

**OTHER AUTHORITIES**

## RESPONDENT'S POST-HEARING BRIEF

Respondent PAE Applied Technologies, LLC (hereinafter "PAE" or "Respondent") files its Post-Hearing Brief and respectfully shows the following:

## INTRODUCTION AND STATEMENT OF CASE

On November 14, 2017, the NLRB issued a Complaint and Notice of Hearing alleging PAE violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act. On January 26, 2018, the NLRB issued its Amendment to Complaint. The hearing in this case was held from February 13, 2018, through February 15, 2018, in Tucson, Arizona, before Administrative Law Judge Mara-Louise Anzalone.

PAE provides stabilization, development, and national security support services to customers around the world. Specifically, it provides services in the areas of global stability and development, infrastructure management solutions, and defense support services. The Respondent contracts with the Customs and Border Protection ("CBP") and employs mechanics, avionic technicians and other employees who perform maintenance on a variety of aircraft at Davis Monthan Air Force Base in Tucson, Arizona and Fort Huachuca in Sierra Vista, Arizona (collectively referred to as the "CBP Aviation Site").

The International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge 2949 (the "Union") represents certain PAE employees at both sites. During the relevant time period, PAE and the Union were governed by a Collective Bargaining Agreement ("CBA") which runs from July 2, 2015 through July 29, 2018. (GCX 2).[1]

[1] References to the transcript are in the following format: page #: line #. Joint Exhibits are referred to as "JX #." Respondent's Exhibits are identified as "RX #." General Counsel Exhibits are identified as "GCX #."

## SUMMARY OF THE ARGUMENTS

In the Complaint, as amended, the General Counsel specifically alleges that PAE violated the Act by engaging in all of the following:

(1) From about June 13, 2017 to about July 24, 2017, Respondent violated Section 8(a) (5) of the Act through its unreasonable delay in furnishing the Union with the information relating to technical data. (Complaint at ¶ 8).

(2) On or about August 17, 2017, Respondent violated Section 8(a)(1) of the Act by denying Mr. Boey's request to be represented by a Union representative of his choice during an interview which could have reasonably led to his discipline. (Complaint at ¶ 6).

(3) About August 20, 2017, Respondent violated Section 8(a)(1) and (3) of the Act by issuing a disciplinary suspension of Mr. Boey: 1) by its disparate and discriminatory enforcement of its rules; 2) because Mr. Boey joined and assisted the Union and engaged in concerted activities; and 3) to discourage employees from engaging in these activities. (Complaint at ¶ 8).

For the reasons set forth more fully below, none of these allegations have merit. First, the evidence at the hearing clearly establishes that the Respondent promptly responded to the Union's request, and any information sought was either in the possession of the Union or wholly accessible to the Union throughout the entire time period cited in the Complaint. The Union's request for

information about technical data was responded to within hours after it was requested. There was no "unreasonable delay" in providing such information, as alleged in the Complaint.

Second, Mr. Boey was not denied the union representative of his choice during an investigative meeting when she "was available", as alleged in the Complaint. Nor was he otherwise denied his *Weingarten* rights.[2] It is undisputed that the Union Representative of Mr. Boey's choice was unavailable for the meeting, and he was ably represented by another Shop Steward who was available.

Finally, Mr. Boey was suspended for a reason wholly unrelated to protected activity -- his refusal to follow a simple directive from his supervisor and his manager. Failure to comply with this reasonable requirement, to fill out a checklist for maintenance work, could have had significant safety consequences to an aircraft that PAE is responsible for maintaining. In the face of this legitimate reason for his suspension, the General Counsel has failed to offer any probative evidence suggesting that the proffered reason was a pretext, or that other similarly employees were treated more leniently.

## STATEMENT OF RELEVANT FACTS

### I. The Respondent's Business

PAE has a federal contract with the United States Department of Homeland Security to provide aircraft maintenance services for the Customs and Border Patrol ("CBP") at Davis-Monthan Air Force Base, in Tucson, and at Fort Huachuca in Sierra Vista, Arizona. PAE and its predecessor company, DS2, have held the contract at the CBP Aviation Site since 2010. (TR 29: 6-11).

[2] *NLRB v. J. Weingarten,* 420 U.S. 251 (1975).

The operative facts in this case occurred at PAE's operations at Davis Monthan Air Force Base ("Davis Monthan"). At all pertinent times, William Phillips was the Site Manager for PAE. In this job, Phillips was the highest ranking PAE manager at Davis Monthan and was responsible for all personnel and day-to-day activities. [TR 28: 3-8]. Ray Donohue was the Maintenance Manager, and he oversaw the maintenance effort for operations at Davis Monthan. (TR 112: 13-17).

Steven Woolley was the Quality Control Supervisor, and in this role, he was responsible to oversee the quality control inspectors and ensure that they were maintaining standards across the entire department. Among other responsibilities, Woolley maintained the technical information which was used by mechanics for aircraft maintenance. (TR 416: 7-24).

## II. The Union's Request for Information

The General Counsel alleges that from about June 13, 2017 until July 24, 2017 the Respondent unreasonably delayed in providing the Union with certain information regarding technical data. In particular, it is alleged that the Respondent delayed in providing the following documents: 1) a copy of the company policy for maintaining publications; 2) a list of all current publications that are used at the site; 3) a "point of contact" for each publication so the employee can contact the manufacturer to verify the tech data is up to date. (Complaint at ¶ 8).

### A. The Maintenance of Technical Data on Site

Technical data, or "tech data", is information used for aircraft repairs and modifications, and can include technical and electrical drawings. As Mr. Woolley testified, tech data consists of "anything you could use that you would need in day-to-day operations for working on aircraft" (TR: 416, 9-13).

Under the Federal Aviation Administration ("FAA") Regulations, all certified mechanics and avionic technicians are responsible to make certain that the maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques and practices prescribed in the manufacturer's manual. (RX 3). Mr. Woolley explained that each employee performing maintenance at PAE is personally responsible for completing this task. (TR: 4261-15).

As Quality Control Supervisor, Mr. Woolley was responsible for maintaining tech data, including the technical publications library, and served as the point of contact for mechanics and avionics technicians who worked at the site. . (TR 416, 17-18). His office was in one of the two adjacent hangers where PAE employees worked, and was a two minute walk from the second hanger. (TR 417, 2-7). Mr. Woolley spent about half of his day walking around the floor, and going to different departments. (TR. 416, 11-15). He was accessible to those mechanics and avionic technicians who had questions about technical publications.

Mr. Woolley also supervised 15 employees in the quality control department, 13 of whom were quality control inspectors. They assisted Mr. Woolley in ensuring the tech data was available, and assisted in getting answers to questions on specialty items or questions about data which had not been addressed before. (TR 417, 18-24, 418: 3-8). There were also three field service representatives on site, who reported to the project management office which manages PAE's contract nation-wide, but who worked along with the local quality control inspectors. (TR 418: 13-25, TR 419, 1-4).

There is a difference between how tech data is handled for day-to-day operations and "specialty" operations. Mechanics and avionic technicians perform many day-to day operations that rely on the manufacturer's documentation. These include maintenance on the airframe, the engine, and some basic modifications to the aircraft. If a mechanic is working on day-to-day

projects, and needs to access a reference manual, the recommended way to do so is to reference the website which the manufacturer maintains. (TR 421: 2-8). As Woolley stated,

> "And if you use tech data off those websites, they're current. The manufacturers' update those websites before they notify anybody else that they've been updated. So if you look onto say Airbus's helicopter website, and you look at their tech data on their website, it is the most current stuff. There's no verification required because you're using if from the manufacturer".

(TR 421: 10-16). Mechanics and avionic technicians can access data for day-to-day work on PAE computers, 8-10 of which are located in kiosks throughout the worksite. (TR 421, 17-24, TR 66, 18-25).

"Specialty" work is unusual and is handled differently than day-to day work. The term "specialty" work refers to certain projects where the tech data is not easily accessible. For example, the Company may be asked to handle maintenance on aircraft from another agency, like the FBI. (TR 422, 14-24). Another example could be a modification to a helicopter which requires different seats. (TR 436, 25). In those cases, mechanics would contact one of the Company's quality assurance persons, who would then call the manufacturer directly. (TR 424: 15-25).

Mr. Woolley explained that there has been a transition in how the Company has handled tech data. Five years ago, mechanics and avionic technicians would access paper manuals, which were updated regularly by the Company. (TR 424: 14-24). Today, the Company has transitioned to an on-line process. The mechanic or avionics technician finds current information by checking the manufacturer's website, which currently includes over 90% of the data. Any drawings or other items that are not maintained on the site are sent with the modifications requested. (TR 425: 7-1).

**B. The Master List**

The Company maintains a listing of publications that can provide a quick reference to mechanics and avionics technicians, called the Technical Publication Revision Master List. ("The

Master List") (TR 419: 19-24, TR 420: 2-10). According to Woolley, the Master List is for reference only, which means it changes frequently, sometimes several times in a week. (TR 420: 12-18). Thus, what might be current today may not be current tomorrow.

Every piece of equipment worked on by mechanics and avionic technicians is not included on the Master List. As Mr. Woolley explained, projects which require regular inspections, e.g., day-to-day operations are included. However, specialty items, "like specialty drawings or modifications" are not included on the Master List. (TR 435: 16-25, TR: 436: 1-7).

As Woolley described it, the Master List is "a good place to start," but it may not include a revision that came out "a couple of days ago". (TR 420, 19-23). Thus, if a mechanic is working on day-to-day functions, and needs to access a reference manual, the recommended way to do so is to reference the website which the manufacturer regularly maintains. (TR 421: 2-8).

Mr. Woolley testified that the Master List is kept in a place accessible to all employees, in a binder in the QC office. (TR 438: 4-24). It is also regularly distributed to supervisors, who can provide copies to employees. (TR 438: 16-24).

### C. The Union's Request for Information

The Complaint alleges that the Company unreasonably delayed in providing information over a five to six week period, from June 13rd to July 24th, so a very close look at the chronology between during this time period is in order.

#### 1. The June 13, 2017 E-Mails

On June 13, 2017, at 12:06 p.m., Ms. Karelis, an aircraft mechanic and shop steward, sent an e-mail to Mr. Phillips, with the subject, "tech data". (GCX 6). In this e-mail, Ms. Karelis noted that an unidentified employee had raised a concern about, "maintenance manual/technical data". She went on to detail the employee's concern before concluding with the following questions:

> "Who is in charge of the publication library? Who is the point of contact to verify that the manuals/tech data are current? Do we have a master list of all of the publications at this site with current updates? For safety reasons, I believe this issue needs immediate attention."

Nowhere in this e-mail did Karelis indicate that she was making any type of request on behalf of the Union.

Nonetheless, Phillips responded four minutes later, at 12:10 p.m. In his e-mail response, Mr. Phillips thanked Ms. Karelis for her feedback and forwarded her e-mail on to Mr. Woolley. At 12:38 p.m., Phillips sent Karelis a second e-mail, explaining to her that all standalone computers were being replaced this week, so tech data could be accessed live. He also asked her if she was aware of that fact. Moreover, Mr. Phillips reiterated that if she had any questions, to direct her inquiries to Mr. Woolley. At 2:16 p.m., Ms. Karelis responded by e-mail, and told Mr. Phillips she was not aware that the Company was replacing the stand-alone computers. (GCEX 8).

Mr. Woolley communicated to all employees, including Ms. Karelis, the same day. He sent a comprehensive e-mail out to all employees at 2:23 p.m.[3] (GCX 7, TR 429: 20-22). In his e-mail, he described the transition from paper manuals to the cloud or web based format. He explained how each mechanic and avionic technician could access current tech data, and he attached a list of sites which each employee could access with their own password. He clarified the following, in detail:

1. All of the manufacturers are moving to a cloud based or web based format.

2. All mechanics, avionics technicians, supervisors and leads must have access to the new information as soon as possible, but no later than less than two weeks later, on June 30, 2017.

3. Most manufacturers are no longer sending updates, and thus the Company will no longer update stand-alone computers.

[3] While the time designations on the June 13th e-mail chain do not appear to be in chronological order, there is an explanation. TDY EPR suggests that the e-mail was written in Puerto Rico, on Eastern Time. The other e-mails were sent on Pacific Time, three hours later. (TR 374: 2-19).

4. Once completed, all technical publications will be available only through the manufactures websites.

5. In the interim, if a mechanic uses data on a "stand-alone" computer it is "for reference only".

6. Each mechanic is responsible to ensure they are using the most current technical data, and this can be accomplished by accessing the sites listed on an attached page.

7. An account is set up for each mechanic to access the most current technical data for Cessna 206's and the Citation aircraft.

8. If a mechanic has any trouble accessing the websites, he or she is directed to see Mr. Woolley.

Mr. Woolley testified that in sending his June 13th e-mail, he was trying to convey the following:

> "I was trying to explain to the employees what was going on because the transition was nearly done, and it was time for everyone to have the required accesses. At this time, the computers and things were ready to go, so that then there was going to be added use of mechanics needing them. And then I also provided a list of contact people and websites that they need to have access to."
>
> (TR 430: 1-7).

When asked what the purpose of providing the website links was, he responded:

> "Because a lot of people---some people already had the accounts with the manufacturers and some didn't. Some preferred to use the computers that we were updating manually. And so I wanted to make sure that everyone knew what was going on and know that they no longer were going to be able to access current data on standalone computers. It had to be accessed through the manufacturer."

(TR 430: 10-16).

The attachment to his June 13th memo included a list with the point of contact for various manufacturers. That list was also laminated and posted at all workstations. (TR 431: 3-4). While the point of contacts allowed the employee to access the manuals directly, the list did not provide one person's name and phone number for each manufacturer. In fact, Mr. Woolley testified that

there is not always one person to talk to at each manufacturer. (TR 432: 19-25). The Company did not want to have mechanics and avionics technicians calling a particular person at each manufacturer, as explained by Mr. Woolley:

> "(Mechanics and avionics technicians are) not really versed in who to go to for every question. Also with me fielding questions for the entire site, there's things that I may have—already have an answer to because it's come up before or just through experience, so we try to route it through the QC department because the technical representatives cover many states, and they don't want the same question 14 times. So they want to say it to one representative and that representative disseminates, or if need be, the other directs you as well."

(TR 440: 20-25, TR 441: 1-5).

Ms. Karelis does not dispute that Woolley sent his e-mail at 2:23 p.m. on the same date she sent her request, although she acknowledged that she probably did not read it when it was sent out. (TR 371: 11-13).

**2. The June 29, 2017 Grievance**

On June 29, 2017, Ms. Karelis filed a grievance claiming that "some employees have been made aware that our publications on the floor and on the Company's "S Drive", are not current. She asks in her statement of facts, "How do we verify for ourselves?" This question is posed even through Woolley's e-mail two weeks earlier explained exactly how to verify such information, and why publications on the floor are for "reference only". (CGEX 10).

In the grievance, under "Remedy Requested", Karelis requested three pieces of information. First, she requested "a copy of company policy(s) regarding publications". (GCEX 10). As Mr. Woolley explained in his testimony, all employees have access to the policy regarding publications on the internal website, called "One PAE". (TR 439, 19-25). In fact, Ms. Karelis admitted on cross-examination that *she knew she had access to this and other company policies.* (TR 389, 1-5).

Second, Ms. Karelis requested "a list of all current publications that are used at this site" (GCEX 10), presumably referring to the Master List. (GCEX 12). Mr. Woolley testified that, as noted above, the Master List is kept in a place accessible to all employees, in a binder in the QC office. (TR 438: 4-24). It is also regularly distributed to supervisors, who can provide copies to employees. (TR 438: 16-24).

Finally, Ms. Karelis requested "a list of the Point of Contact for each publication, so the employee can contact the manufacturer to verify the tech data is up-to-date." (GCEX 10). As mentioned above, Mr. Woolley already provided a list of contacts, attached to his June 23rd e-mail, and posted a laminated version at workstations.

While Ms. Karelis asked for this information in the "Remedy Requested" section of the grievance, she did not file a separate information request on June 29th. The Company responded to her grievance on July 5, 2017, once again explaining (as they did in Woolley's June 13th e-mail), "(c)omputers and printers are provided in both hangers for employees to retrieve and print the most up-to-date technical publications. Tucson PAE Management has provided, on multiple occasions and through multiple avenues, to all site employees the information required to retrieve the required publications." (GCEX 10).

### 3. The July 24th E-Mail from Mr. Phillips to Ms. Karelis

On July 24, 2017, Mr. Phillips sent a copy of the Master List to all employees, including Ms. Karelis. (GCEX 12, 12(a)). As stated above, aside from this distribution to all employees in July, the Master List is held within the Quality Control department, and each employee, salaried and hourly, has access to it. (TR 65. 18-21).

## III. The Circumstances Surrounding Mr. Boey's Disciplinary Suspension

The facts relating to Mr. Boey's refusal to complete an Aircraft Logbook Review Checklist (the "Logbook, Checklist"), and the Company's interview with him about his misconduct are as follows.

### A. The Aircraft Logbook and the Logbook Checklist

A&P mechanics are required to complete and sign flight logs in airplane logbooks, after conducting maintenance on assigned aircraft. The logbook, also called a "green book," is used to provide information about a given aircraft to verify the appropriate inspection and maintenance has been performed. (TR 470: 8-9). Every aircraft on site has a flight record sheet in the green book, which must be signed off by the mechanic. (TR 469: 10-11, TR 490, 18-21).). The logbook includes flight logs and details about each aircraft, and provides details such as aircraft number, aircraft type, actual hours and any inspections which may be due. (TR 468, 17-25). It is used to verify that the aircraft is airworthy. (TR 491, 4-7).

Mr. Boey testified that in his role as a mechanic he was given training in completing green books and signed a sheet indicating that he understood what information he needed to be providing in the green book. (TR 211: 1-6). This training took place for all A&P mechanics in the summer of 2015. (TR 491, 7-13).

Several years ago, the Company experienced significant problems relating to how mechanics were filling out the green book entries. Specifically, the Customs and Border Protection air crews were complaining that some of the inspections weren't documented, and that there was "overflying" of aircraft—meaning that inspections were overdue because of a failure to properly document flight hours. (TR 492, 13-21). These problems impact an aircraft's airworthiness. The consequences are significant: not only is flying an un-airworthy aircraft illegal, but it also can

result in significant safety issues. As Mr. Phillips explained, "you're putting the crew flying the aircraft, whether pilot or air crew in the aircraft, you're putting their life in danger." (TR 492, 5-14).

To address these issues, the Company conducted initial training of A&P mechanics in June 2015, as noted above. Finding that the training did not sufficiently resolve the problem, PAE introduced a one page Logbook Checklist in October 2015, "to simplify the process for the mechanic, what he or she needs to do before they close out the book and give it to the pilot". (TR 494, 15-18). According to Mr. Phillips, the checklist has been utilized since late 2015, and it has resulted in at least a 75-80 percent decrease in the amount of errors, (TR 494, 22-5, 495, 1-3).

The checklist is a one page form used to verify that a mechanic or technician is properly completing the green book. It is a checklist of the things a mechanic is required to do to validate that the green book entry is accurate and correct, and to help verify that the aircraft is ready to fly and released for the next flight. (TR 121: 15-22). While there is not a company policy which specifically addresses the requirement for employees to fill out the checklist, it is used as an aid which helps a mechanic accurately fill out the flight log. (TR 122, 20-12). As Mr. Phillips testified:

> "We have the mechanics or technicians scrub the green book, the logbook, against what's in the computer, what the write-ups are on the aircraft, whether it be safety or flight or non-safety of flight. The checklist helps them to simplify it to balance what's in the green book that we give to the pilots and what's in the computer as far as open discrepancies on the aircraft. This helps them do the logbook review. It's a checklist for them to go by to verify the paperwork on the aircraft before it's given to the aircrew".

(TR 467: 25, 468, 1-9).

The checklist was simply an aid to mechanics to ensure that they filled out the green book properly, as they had been trained to do. Indeed, Mr. Boey acknowledged, on cross-examination,

that the checklist is fairly simple, and the questions on it relate to information that was shared in the training which he attended. (TR 11-15, R EX 1, TR: 13-16).

All mechanics and technicians in the operations section may be required to fill out the checklist on a given day. (TR 470: 10-13). However, not every mechanic or technician is required to fill out the checklist every day. As Mr. Phillips explained:

> "Since we have a larger crew on day shift, obviously not every mechanic will be doing this checklist on day shift....we have a less amount of personnel on swing shift...So not every day on day shift or even may even swing shift that every mechanic will be doing these checklist."

(TR 489, 8-18).

### B. Mr. Boey's Refusal to Complete the Checklist

Mr. Boey has been employed by PAE as an aircraft mechanic since 2012. (TR 183: 13-15). Prior to August 2017, Mr. Boey worked on the day shift, and in his role on that shift, he was not asked to complete the Logbook Checklist. In July 2017, however, Mr. Boey was moved to swing shift, which had fewer mechanics on site.[4] (TR 118, 1-7). Once on swing shift, two lead mechanics, his supervisor, and his manager all asked him to complete the checklist. As set forth below, he defied them at every turn, and offered to sign the checklist only as a "trade-off" onthe condition that the Company put it in writing or provide him with a written policy.

In August 16, 2017, John Kautz, Mr. Boey's operations supervisor, had been informed by two lead mechanics, Raul Valezzi and Eric Walton, that Mr. Boey had been asked to complete the

[4] The terms "night shift" and "swing shift" have been used interchangeably throughout the hearing, both terms meaning the 3:00 p.m to 11:30 p.m. shift.

logbook checklist and failed to do so. (GCEX 17, TR 145: 1-17).[5] Thereafter, Mr. Kautz demanded that he complete the checklist. (TR 214: 1-4). Mr. Boey refused to do so.

Mr. Boey told Mr. Kautz that he was once told by Dave Harvey, an HR representative, who worked at the "PMO", the Company's parent site, to do no company paperwork without a policy. He did not however, ask Mr. Kautz for a policy about filing out the checklist. Instead, he asked Mr. Kautz for a copy of the "read and initial", which is used when an employee reads a policy and acknowledges they have done so.[6] Nonetheless, Mr. Boey acknowledged during cross-examination that Mr. Kautz "demanded" that he complete the checklist, and he made it clear that it was a "requirement". Mr. Boey testified that he told Mr. Kautz, "no". (TR 214, 1-18).

Mr. Boey subsequently met with his manager, Mr. Donohue, in Mr. Donohue's office. During that meeting, Mr. Boey informed Mr. Donohue that he not would complete the logbook checklist unless Mr. Donohue provided him the policy in writing. (TR 122: 2-12). No such policy existed. (TR 122: 20-23).

On cross-examination, Mr. Boey left no doubt that he was told by his lead mechanics and second shift management that signing the checklist was *required*, and he *choose not to comply*.

> "Q. Do you remember completing a statement with the National Labor Relations Board…?"

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[5] Counsel for General Counsel spent a good amount of time during Mr. Valezzi's testimony attempting to establish Mr. Valezzi was a supervisor under Section 2(11) of the Act. While the Respondent submits that such inquiry is irrelevant to this proceeding and need not be decided here, the testimony clearly proves that Mr. Valezzi was not a statutory supervisor. Among other factors supporting Mr. Valezzi's employee status, he testified credibly that he does not have any authority to hire, discipline, terminate, adjust grievances, grant time off, assign overtime, or effectively recommend these actions. (TR 159, 5-25, TR 160, 1-17).

[6] In Mr. Kautz's statement to the Company, Mr. Kautz explained that Mr. Boey was defiant. Mr. Boey told Mr. Kautz, "I didn't do it on days and I'm not going to do it on nights" (GCEX17). When Mr. Kautz asked him again to complete the form "because it is a tool we use to double check the books, that the PMO already approved the form and printed multiple copies, Mr. Boey responded that, "the only way I will do it is if you put it in writing". (GC EX 17). After holding a meeting with the two lead mechanics and Mr. Boey to discuss the matter, Mr. Boey told Mr. Kautz that he would not do anything that is not a PMO policy. Mr. Kautz explained that this is not day crew and that everybody on nights does the form. Mr. Boey responded by telling his supervisor that he was, "not changing (his) ways from days to nights." (GCEX 17).

A. Yes, I do.

Q. And do you remember, in your statement, that you made it clear that you were told, this is quote, "told by leads and management on second shift that signing a checklist was *mandatory*?"

A. Yes.

Q. And you also said in your statement, did you not, that you told a manager, Mr. Donohue, that you would gladly complete the checklist if he would give you the policy?"

A. That's correct…

Q. You told Mr. Donohue that you would only sign the checklist if he handed you a policy that provided you had to.

A. That's correct."

(TR 212: 20-25, 215: 1-16) (emphasis added).

Ms. Karelis, who had been shop steward since the beginning of the contract, acknowledged that she does not know of any employee, other than Mr. Boey, who refused to fill out a checklist once it was requested by his or her supervisor and manager. (TR. 390: 13-16).

### C. The August 17th Meeting.

The Company decided to meet with Mr. Boey regarding his refusal to sign the checklist on August 17th, with the purpose of asking Mr. Boey to submit a statement. Present at the meeting was Mr. Donohue, Mr. Boey, and Robert Shelton, the maintenance supervisor for the Black Hawk inspection section. (TR: 123, 1-21). Mr. Donohue asked Mr. Boey if he wanted to have a union steward present. He said yes. Given that the meeting began on swing shift, Mark Hansford, the on-duty shop steward was brought into the room and was present during the request. (TR 123:22-25, TR 124: 1-3).

The meeting started approximately at 3:15 p.m., while swing shift was underway and after day shift was completed. (TR 219: 13-19, TR 257: 23-24)). During the meeting, Mr. Boey requested that Ms. Karelis attend. However, Ms. Karelis worked on day shift, which began at 6:00 a.m. and ended at 2:30 p.m. (TR 393: 1-2). The other shop steward, Mr. Hansford, was on duty during swing shift, from 3:00 p.m. until 11:15 p.m. (TR 219: 20-23).

Mr. Donohue explained that Ms. Karelis was no longer on the clock, and was not in the facility when the meeting was held. As Mr. Donohue testified, given that Ms. Karelis worked as a mechanic on day shift, "there was no reason for me to believe she was still there." (TR. 124, 15-16). Indeed, even Mr. Boey acknowledged that she was not on the property at the time of the meeting. On cross examination, Mr. Boey stated that, "to the best of my knowledge, Ms. Karelis was not there." (TR 220: 7-8). Ms. Karelis admitted that to be the case herself; that she clocked out at 2:30 p.m. that day. (TR. 393: 1-3). Mr. Hansford represented Mr. Boey throughout the meeting, and he made no effort to contact Ms. Karelis. (TR 257: 17-19).

Rather than requiring Mr. Boey to complete his statement at the meeting, Mr. Donohue gave Mr. Boey a full 24 hours to complete the statement, approximately 16 hours after his shift was over. (TR.258: 3-5). Thus, even though Ms. Karelis was not on site when the meeting took place, Mr. Boey could have contacted her about the statement thereafter.

**D. The Decision to Issue a Disciplinary Suspension to Mr. Boey**

In determining what steps to take regarding Mr. Boey's misconduct, Mr. Phillips sought review by a Disciplinary Review Board ("DRB"). Under company policy, a DRB is convened in those cases where the Company is considering termination. (TR 462: 12-21). Mr. Phillips and Mr. Donohue were seeking termination due to their belief that, given the circumstances of Mr. Boey's refusal to complete the checklist, he was insubordinate. (TR 463: 1-3).

The Company's disciplinary policy, entitled Policy 314, separates types of infractions into several categories. Under Table A, the Company lists types of violations and recommended progressive steps. Rule 32, which includes "insubordination", calls for termination, which is what was being proposed initially by Mr. Phillips. (GCX 13). Ultimately, the DRB settled on issuing Mr. Boey a lesser penalty, a five day suspension for violation of Rule 2, unsatisfactory quality or quantity of work, and Rule 12, inability to work harmoniously with others. (R3).[7]

The DRB meeting was held by teleconference on August 25, 2017, and included various management representatives who discussed whether termination was appropriate. (RX3, TR 100, 15-19). In advance of the DRB meeting, Mr. Phillips prepared a comprehensive package with statements, including the statement submitted by management and employee representatives as well as excerpts from the green book and sample logbook checklists. (RX 3, TR 465: 9-22, 16-23). Mr. Phillips felt it was important for the DRB to see the statements so they could gather all of the facts since they were considering termination. Mr. Boey's statement was included so the DRB could see his explanation. (TR 466, 1-4).

Ultimately, the DRB unanimously decided to apply leniency with respect to Mr. Boey, and issue him a disciplinary suspension for "time served", meaning the time he had been suspended, rather than termination. (106, 12-16). As Mr. Donohue explained, the DRB "looked at his performance, his habits of work and his past record, and overall the Board, and I agreed with them at the end, to give Boey a chance and just suspend in lieu of termination." (TR 133: 22-25).

[7] Mr. Boey was notified on Sunday, August 20 that he was being suspended pending review for termination for insubordination, consistent with Section 5.7 of the Policy (GC13). Mr. Phillips confirmed that the August 20th meeting was not one where discipline was issued, and the disciplinary suspension took place the next Sunday, on August 27. At that time, Mr. Boey was afforded the opportunity to have Ms. Karelis present, and was issued his written disciplinary notice. (TR 463: 12- 25, 464, 1-21, GCE 24).

## ARGUMENT

## THE GENERAL COUNSEL FAILED TO ESTABLISH THAT PAE COMMITTED ANY OF THE UNFAIR LABOR PRACTICES ALLEGED IN THE COMPLAINT

The General Counsel bears the burden of establishing each element of its contentions that the Respondent violated the Act. *See, e.g., KBM Electronics, Inc.*, 218 NLRB 1352, 1359 (1975). That "burden never shifts, and ... the discrediting of any of Respondent's evidence does not, without more, constitute affirmative evidence capable of sustaining or supporting the General Counsel's obligation to prove his case." *Id.*; *see also NLRB v. Joseph Antell, Inc.*, 358 F.2d 880, 882 (1st Cir. 1966) ("The mere disbelief of testimony establishes nothing.") As set forth below, the General Counsel has not satisfied this standard.

### A. The General Counsel Failed to Prove Its Allegation Regarding the Union's Request for Information

As specifically limited in the General Counsel's Amendment to Complaint, the issue in this case relating to its allegation concerning the Union's request for information is whether PAE violated Section 8(a)(5) when it "unreasonably delayed", from about June 13, 2017 to about June 24, 2017, to provide to the Union information relating to technical data. Importantly, in its Amendment to Complaint, the Union abandoned any claim that the Company failed to produce relevant information, simply alleging that it *unreasonably delayed* in doing so. In particular, the General Counsel alleges in paragraph 8 (c) of the Complaint that the Company delayed in producing the following information:

(1) Copies of company policies for maintaining publications;

(2) A list of all current publications that are used at the site;

(3) The Point of Contact for each publication so the employee can contact the manufacturer to verify the tech data is up-to-date.

At the inception of the hearing, the General Counsel moved to amend the Complaint to modify the dates during which it was claiming an "unreasonable delay" on the part of the Respondent, from June 29th through July 24th to June 13th through July 24th, a motion that was granted by the Administrative Law Judge. (TR 19, 21-25). Thus, our inquiry requires an examination of what the Company's obligations were to provide the information requested, and whether it delayed in providing the information during that six week period.

The General Counsel cannot establish that the Company unreasonably delayed in providing the relevant information. Once Ms. Karelis made her initial inquiry in her June 13th e-mail to Mr. Phillips, the Company moved quickly to address each of the items which she raised. In fact, they responded with comprehensive information on the *same day* in an e-mail and attachment from Mr. Woolley: information that Ms. Karelis does not deny receiving but which she doubts that she even read at that time. (TR 371: 11-13). Moreover, the information which was not formally turned over to Ms. Karelis was already readily accessible to her, and she was fully aware of it.

Under the NLRA, an employer has a duty to furnish information if the information requested by the union is both relevant and "of use to the union in carrying out its statutory responsibilities." *See e.g. NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435-36 (1967). However, the duty to furnish is not absolute, and the Board will consider the countervailing legitimate interests of the employer. In *Detroit Edison Co. v. NLRB,* the Supreme Court stated:

> A union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner

> requested. The duty to supply information § 8(a)(5) turns upon the 'circumstances of the particular case'...and much the same may be said for the type of disclosure that will satisfy that duty.

440 U.S. 301, 314 (1979) (quotation omitted). Moreover, the Board follows a "discovery-type" standard in which the requested information must be "reasonably necessary" to the Union's performance of its function as the bargaining representative. *See, NLRB v. Acme Indus. Co.,* 385 U.S. 432 (1967).

The General Counsel's evidence on the Union's request regarding "tech data" is less than clear, but it appears to involve two distinct requests for essentially the same information: one in an e-mail from Ms. Karelis on June 13, 2017 to Mr. Phillips, and the second on the "Remedy Requested" section of a grievance filed on June 29, 2017. Both requests were somewhat unclear. The first request, on June 13, did not indicate that it was made on behalf of the Union. The second request, on June 29, was not an information request per se, rather it simply requested a remedy as part of a grievance.

In any event, the three items requested relate to how an employee can access current tech data, which is a necessary function for an aircraft mechanic or avionics technician under the applicable FARs. A close examination of what occurred immediately after Ms. Karelis' June 13th e-mail proves that not only was there no delay, but the Company moved with speed to address her inquiries:

- Shortly after noon on June 13th, Ms. Karelis sent her e-mail to Mr. Phillips, explaining that employees had questions about how to access current tech data. She specifically asked for a master list of publications, which she admittedly already had access to. She also asked for "points of contact" to verify that manuals were current.

- Less than *five minutes later*, Mr. Phillips responded, thanking her for her feedback and forwarding her e-mail to Mr. Woolley.

- Less than *a half hour later*, Mr. Phillips responded to Ms. Karelis again, explaining to her that current data will be available live, later the same week, and asking her to contact Mr. Woolley with any questions.

- Less than *two hours later*, Mr. Woolley sent all employees, including Ms. Karelis, the comprehensive e-mail with attachments. A close examination of this e-mail is warranted. The e-mail explained exactly how employees could ensure that they were accessing the most current tech data, the inquiry which she raised. He attached to this e-mail a list of points of contact for each manufacturer, so employees would know exactly how to access current information.

- On June 29th, the Union filed a grievance addressing the same issue raised in Ms. Karelis' June 13th e-mail. It also included, under "Remedy Requested" the same list of documents sought in Ms. Karelis' June 13th e-mail.

- Less than *six days later,* the Company responded, by explaining that computers and printers are provided in both hangers for employees to retrieve and print the most up-to-date technical publications.

The above chronology demonstrates that the Company did not "drag their feet" on providing the requested information. To the contrary, it responded *quickly* to Ms. Karelis' requests, and if anything, PAE only delayed in providing more complete information by the fact that the requests were made while it was finalizing its transition to an on-line process.

The General Counsel cannot prove that the Company unreasonably delayed in providing the three specific documents requested by Ms. Karelis in the June 13th e-mail. Indeed, with respect to the list of publications and the policy on publications, Ms. Karelis and other employees *admitted that they knew exactly where to access these current documents easily.*

Further, the communications from the Company made it clear that Mr. Woolley and his team were available to answer any questions that employees might have had about tech data. So were the field service representatives on site.

It is undisputed that the policy on publications was available to all employees in the QC office, nearby, and the policy on publications was available to all employees on the Company's

intranet, which was accessible in kiosks located throughout the facilities. Thus, they were available to the Union at any time. With respect to the "points of contact", Mr. Woolley provided the list of contacts for each manufacturer in his June 13th e-mail, and posted those contacts throughout the facility.

Finally, as Mr. Woolley explained, there simply is not one person sitting at a desk at each manufacturer for employees to call directly, since there is different equipment and various regions. In fact, if all employees chose to contact one person at each manufacturer it would create confusion. The clear and convincing evidence is that the Respondent took numerous steps in the period from June 13th through July 24th to explain to employees exactly how they could ensure their data was current—by either accessing the appropriate website, or contacting Mr. Woolley or his team directly. For these reasons, this allegation should be dismissed.

### B. The General Counsel Failed to Prove Its Allegations Regarding Mr. Boey

#### 1. The General Counsel failed to prove the allegations in paragraph 6 of the Complaint that a) PAE violated Section 8(a)(1) of the Act because Mr. Donohue denied Mr. Boey's request to have a representative of his choosing "when she was available", and b) conducted its interview with another union representative.

In *NLRB v. J. Weingarten*, 420 U.S. 251, 256-60 (1975), the Supreme Court held that employees may refuse to submit to an interview by employer representatives, without a union representative being present, if the employee reasonably believes that the interview may result in discipline. In reaching this conclusion, however, the Court made it clear that (1) the right arises "only in situation where the employee requests representation;" (2) the employee's right to request representation "is limited to situations where the employee reasonably believes the investigation will result in disciplinary action;" (3) exercise of the right may not interfere with legitimate

employer prerogatives; and (4) the employer may carry on its inquiry without interviewing the employee if it so chooses. *Id.*

In this case, it is undisputed that Ms. Karelis was unavailable when the August 17, 2017 meeting with Mr. Boey took place. In fact, both Mr. Boey and Ms. Karelis admit that she had clocked out before the time the meeting began, approximately 3:15 p.m. Moreover, it is also undisputed that Mr. Boey was represented by the swing shift shop steward, Mark Hansford, throughout the entire meeting, and at no time during the meeting did Mr. Boey or Mr. Hansford attempt to contact Ms. Karelis. Finally, it is also undisputed that the purpose of the meeting was to secure a statement from Mr. Boey, and he was given a full 24 hours to complete it—providing him with ample time to contact Ms. Karelis if he so choose. These facts do not support an 8(a)(1) claim under *Weingarten.*

*Weingarten* does not require PAE management to locate Mr. Boey's shop steward.[8] *Roadway Express,* 246 NLRB 1127, 1130 (1979) ("we believe that the burden of informing unit members of the designation of [shop stewards] is one more appropriately borne by the bargaining agent"); *see also Pacific Gas & Elec. Co.,* 253 NLRB 1143 (1981) (no obligation by employer to provide shop steward of choice). As the Board explained in *Coca-Cola Bottling Co.*,

> [T]here is nothing in the Supreme Court's opinion in Weingarten which indicates that an employer must postpone interviews with its employees because a particular union representative, here the shop steward, is unavailable either for personal or other reasons for which the employer is not responsible[.] …
>
> Our dissenting colleagues, nevertheless, characterize [the employer's] actions as a denial of the "help" to which the employee was entitled. In fact, [the employer] never denied [the employee's]

[8] Requiring the Company to search for Ms. Karelis after she left work would have especially burdensome. Not only was her whereabouts unknown, the workplace is located on a military base which would require re-entry.

> request; it was simply unable to comply therewith. When [the employee] was informed of this fact, he did not, as he could have, request alternative representation. We see nothing in Weingarten which implies that it is the employer's obligation to suggest and/or secure alternative representation where the representative originally requested by the employee is unavailable. Therefore, in these circumstances, we disagree with our colleagues that at this point the burden shifted to [employer] either to stay the meeting or to offer [the employee] a meeting without the steward or none at all.
>
> Accordingly, we shall adopt the Administrative Law Judge's recommendation that the complaint be dismissed in its entirety.

227 NLRB 1276, 1276-1277 (1977).[9]

Under *Weingarten*, once an employee makes a valid request for representation, an employer has three options: (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice between continuing the interview unaccompanied by a representative or having no interview at all. *Id.* Here, the evidence establishes that Mr. Donohue's granted Mr. Boey's request, and Mark Hansford ably represented Mr. Boey when he was asked to submit a statement within 24 hours. The Respondent sought no further information and did not request or pressure Mr. Boey to complete a statement on the spot. In fact, given that his shift lasted 8 ½ hours, he was left with approximately 15½ hours after his shift to speak with Ms. Karelis before submitting the statement to Mr. Donohue.

The General Counsel may attempt to argue that Mr. Hansford was just an "assistant shop steward", and thus not fully capable of representing Mr. Boey when he was asked to submit a statement. In fact, Mr. Hansford first described his position as "assistant shop steward" in his

[9] The Board explained that the employer "did not compel [the employee's] participation without representation. [The employee] could have requested and obtained the assistance of any union representative who was available. In the absence of such a request, [the employer] was entitled to proceed with the interview." 227 NLRB at 1276-1277.

direct testimony, only to change his testimony on cross examination, and acknowledge that he was, in fact, the shop steward on swing shift. Thus, this argument must fail.

The General Counsel will likely also argue that Ms. Karelis has represented other employees on off shifts, under substantially similar circumstances in the past. First, even if this was the case, it does not alter the fact that under Weingarten and its progeny, the Company is not *required* to find whatever shop steward the employee requests, if that representative is unavailable. *Id.*

Second, the circumstances Mr. Karelis cited are not substantially similar to those involving Mr. Boey. The following examples were cited by Ms. Karelis, and on cross examination she *admitted* that each are distinguishable from Mr. Boey's meeting.

a) With respect to a meeting to discuss Jeff William's grievance on swing shift, in January 2017, Ms. Karelis admitted that she wasn't sure if another steward was available on that shift. Mr. Hansford had not yet assumed his role of swing shift shop steward. (TR 397, 13-16).

b) With respect to a teleconference which took place on swing shift, in February 2017, also involving Mr. Williams, Ms. Karelis acknowledged that this was not an investigative interview (discipline had already been issued) and that she was not sure if another steward was available on that shift. (TR 398, 8-16).

c) With respect to a meeting regarding Mr. Kautz in May or April 2017, Ms. Karelis admitted that no discipline was hanging in the balance. (TR 399, 7-12).

d) With respect to Ms. Lowery, Ms. Karelis admitted that the meeting, whenever it was held, was not an investigative interview and was held to discuss the company's dress code. (TR 400: 1-9).

e) Finally, with respect to Mr. Valezzi, in April or May, Ms. Karelis admitted that the meeting was not an investigative interview, and was held "to identify a problem and squash it". (TR 400, 10-24).

The above situations are each distinguishable from the investigative interview which was conducted to secure a statement from Mr. Boey. They did not involve investigative interviews, and most, if not all occurred when there was not a shop steward available on swing shift.

In sum, the General Counsel has offered no evidence to establish that Mr. Boey's *Weingarten* rights were violated. A union steward participated in the meeting, he was given ample time after the meeting to complete his statement, and there is no evidence that the Company acted arbitrary in denying his request or continuing on with the meeting.

**2. The General Counsel failed to prove the allegations in paragraph 8 of the Complaint that PAE violated Sections 8(a)(1) and 8(a)(3) of the Act because it issued a disciplinary suspension of Mr. Boey, a) by its disparate and discriminatory enforcement of its rules, b) because Mr. Boey joined and assisted the Union and engaged in protected concerted activities, and c) to discourage employees from engaging in such activities.**

The General Counsel's claim in paragraph 8 appears to include every impermissible reason for issuing discipline to Mr. Boey in the "kitchen sink", but not the one that actually occurred: his resistance and refusal to complete a simple, one page checklist to assist him in completing the green book accurately. As the credible evidence in the record demonstrates, this simple one-page checklist was necessary to ensure the safety of the aircrafts that PAE were responsible for maintaining.

Rather than comply with the request of his leads, his supervisor and his manager, he refused, and attempted to "trade off" his compliance with his own personal request to have the Company produce a written policy or a "read and sign" document regarding the checklist, neither of which existed or was required to have existed. Rather than following the long-standing principle long established in arbitrations of "obey now, grieve later", he said no, and resisted to the point

that the company could reach no other conclusion that he was refusing to comply with a reasonable request.

This issue should be analyzed under *Wright Line.* To establish unlawful discipline under *Wright Line*, the General Counsel must first prove, by a preponderance of the evidence, that the employee's union sympathies or activities were a substantial or motivating factor in the employer's decision to take action against them. *Manno Electric, Inc.*, 321 NLRB 278, 280 (1996). The General Counsel makes a showing of discriminatory motivation by proving the employee's union support or activity, employer knowledge of that activity, and animus against the employee's protected conduct. *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999). Proof of an employer's motive can be based upon direct evidence or can be inferred from circumstantial evidence, based on the record as a whole. *Ronin Shipbuilding*, 330 NLRB 464 (2000); *Robert Orr/Sysco Food Services*, 343 NLRB 1183 (2004). If the General Counsel is successful, the burden of persuasion then shifts to the employer to show that it would have taken the same action even in the absence of the employee's union support or activities. *Wright Line*, 251 NLRB at 1089; *Septix Waste, Inc.*, 346 NLRB 494, 496 (2006); *Willamette Industries*, 341 NLRB 560, 563 (2004).

Here, the General Counsel has not established a *prima facie* case of discrimination. The General Counsel cannot prove that PAE's decision to issue Mr. Boey's suspension was based on the fact that he joined and assisted the Union or that he engaged in protected concerted activity. Indeed, the Union is likely to argue that because Mr. Boey previously filed a grievance about overtime in June 2017, and had a made a request for time off that was initially denied, that the Company retaliated against him. This allegation is wholly without factual support, and the General Counsel has offered no evidence of any causal connection between these events. Moreover, both the grievance and the time off request were resolved amicably. (TR 115, 14-19, TR 120, 12-24).

Nor is there a scintilla of evidence that PAE sought to discourage employees from engaging in protected concerted activities. Finally, by Ms. Karelis' own admission, during her long tenure as shop steward she was aware of *no other cases* where an employee has refused to fill out the logbook checklist after being requested to do so by management. Thus, the General Counsel cannot prove that the Company unlawfully suspended Mr. Boey by its disparate and discriminatory enforcement of its rules.

Nor is there any proof of generalized animus. In fact, the DRB's decision to mitigate the discipline to a suspension reflects that they deliberated over this misconduct in an unbiased manner, and took into account Mr. Boey's full record rather than precipitously accepting local requests to terminate him for engaging in insubordination.

Nonetheless, even if one assumed that the General Counsel could make out a *prima facie* case, the evidence proves that PAE would have issued the suspension to Mr. Boey regardless of any conduct protected under the NLRA. The credible evidence at the hearing demonstrated that PAE issued the suspension to Mr. Boey for a legitimate reason wholly unrelated to his protected activities: his continued resistance to follow the instruction of Company management to fill out a simple checklist.

As explained by Mr. Phillips, the checklist was simply an aid to assist the Company in ensuring that green book entries are completed properly: *a critical and necessary process that relates directly to flight safety*. Not only did the Company have the right to require Mr. Boey to complete the checklist, his conduct in refusing this mandate and attempting to "trade off" compliance with requests for the instructions in writing is inexcusable.

Mr. Boey admitted on cross examination that he was fully aware that his supervisor and manager "mandated" that he complete the checklist. Any attempt by the General Counsel to suggest that Mr. Boey had a right to refuse this requirement because of his perception that the Company should have produced a policy *in writing* is without support. Arbitrators have long held that if a represented employee believes that a requirement is unlawful, he or she should "obey first, grieve later". See *Specialized Distribution Management, Inc. and Bob Mattingly*, 1995 NLRB Lexis 474 (April 25, 1995); How Arbitration Works, Sixth Edition, BNA, p. 262, ("Most arbitrators have taken the position that employees must not take matters into their own hands, but must obey orders and carry out their assignments, even if they believe those assignments are in violation of the agreement, and then turn to the grievance procedure for relief.") Here, there is simply no reason that Mr. Boey could not have completed the checklist, and then filed a grievance if he felt that requiring it somehow violated the CBA.

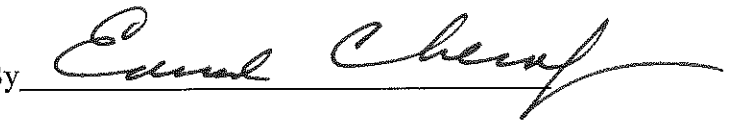
The General Counsel's claim that PAE issued the disciplinary suspension for an unlawful reason is baseless and should be dismissed.

## CONCLUSION

The General Counsel has failed to satisfy his burden to establish any of the other unfair labor practice allegations asserted against PAE in his Complaint. Therefore, the General Counsel's Complaint against PAE should be dismissed in its entirety.

DATED: March 30, 2018.

JACKSON LEWIS P.C.

By 

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